

Exhibit D Declaration of Alan Garten

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
TRUMP YOUR COMPETITION, INC., : 15 Misc. 00400
: Plaintiff-Applicant, : In re Proceeding No. 91217618
v. : (Pending before the United States
: Trademark Trial and Appeal Board)
DONALD J. TRUMP, :
: Defendant-Opposer.
-----x

DECLARATION OF ALAN GARTEN

ALAN GARTEN declares and says:

1. I am Executive Vice President and General Counsel of The Trump Organization ("Trump Org.") and its founder, President and Chairman, Donald J. Trump, the Defendant-Opposer in this proceeding ("Mr. Trump"). I am familiar fully with the facts and information set forth herein based on my personal knowledge and my review of correspondence and other documents.

2. I submit this declaration (i) in opposition to the motion by Plaintiff-Applicant Trump Your Competition, Inc. ("TYC") to compel the trial testimony of Mr. Trump in a related proceeding (the "TTAB Proceeding") pending before the United States Trademark Trial and Appeal Board (the "TTAB"), pursuant to Fed. R. Civ. P. 45(d), and (ii) in support of Mr. Trump's motion for a protective order pursuant to Fed. R. Civ. P. 26(c) precluding TYC from deposing him in the TTAB Proceeding.

3. Trump Org. is a multi-billion-dollar business enterprise owned and controlled by Mr. Trump which serves as the principal holding company for his business ventures, including the operation of numerous residential real estate properties, hotels, resorts, golf courses, wineries and entertainment ventures that are identified, marketed and sold under the "TRUMP" name and brand.

4. As part of the regular operation of its business, Trump Org. controls, manages and licenses more than 500 trademarks containing or incorporating the "TRUMP" name in connection with a wide variety of products and services in jurisdictions all over the world (the "TRUMP Trademarks").

5. Given the breadth and scope of the business and the number of TRUMP Trademarks, Mr. Trump has delegated to me full responsibility and authority over both the day-to-day and long-term management, enforcement and overall strategy associated with filing and prosecution of the TRUMP Trademarks.

6. Accordingly, Mr. Trump's Initial Disclosures and Pretrial Disclosures in the TTAB Proceeding correctly identified me as the individual having the most knowledge concerning the TRUMP Trademarks and other facts and information relevant to the TTAB Proceeding. *See* Weiner Decl., Ex. F, Defendant-Opposer's Initial Disclosures; *id.*, Ex. G, Defendant-Opposer's Pretrial Disclosures.

7. In addition, Mr. Trump's son Eric Trump, Executive Vice President of Development and Acquisitions of Trump Org., is also knowledgeable concerning the management, licensing and use of the TRUMP Trademarks and was so identified in the TTAB Proceeding. *See id.*, Ex. H, Defendant-Opposer's Supplemental Pretrial

Disclosures.

8. On November 4, 2015, Mr. Trump's counsel advised TYC that he would be taking my testimony for use in the TTAB Proceeding. Mr. Trump's counsel invited TYC to attend my deposition and conduct cross-examination. *See id.*, Ex. I, Defendant-Opposer's Notice of Taking Testimony Deposition of Alan Garten.

9. On November 12, 2015, I testified under oath in the TTAB Proceeding regarding the maintenance, use and policing of the TRUMP Trademarks and the "TRUMP" brand. Not only did TYC's counsel attend my deposition, he also conducted an extensive cross-examination.

10. The majority of TYC's cross-examination focused on matters unconnected to issues in the TTAB Proceeding. For example, TYC's counsel questioned me at length concerning certain ongoing, unrelated litigations. *See id.*, Ex. C, Transcript of the Deposition of Alan Garten (Nov. 12, 2015) ("Garten Tr."), at 98:25 – 103:19 and 107:15 – 108:10. He also tested my knowledge regarding the meaning of certain legal terms. *See id.* at 111:6 – 112:22 and 98:4-24. After approximately two hours and forty minutes, TYC's counsel indicated he had no further questions.

11. Notwithstanding the foregoing, I offered to continue my examination for as long as necessary for TYC's counsel to ask any and all questions he might have related to issues in the TTAB Proceeding, whether for myself or anyone else at Trump Org., including Mr. Trump. *See id.* at 115:9-12.

12. TYC's counsel refused to explore whether I could answer any of his other questions, replying that he had "questions that [he'd] wish to ask [Mr. Trump]

directly." *Id.* at 117:7-8. When asked what those questions could possibly be — given that I am the person most knowledgeable concerning the TRUMP Trademarks — TYC's counsel refused to explain, stating "I'm not going to answer questions." *Id.* at 117:24-25. To this day, TYC has never given any basis for questioning Mr. Trump in the TTAB Proceeding.

13. TYC continues to demand Mr. Trump's testimony, despite being advised that he does not have unique, personal knowledge concerning the facts and issues relevant to the TTAB Proceeding.

14. In an attempt to reach a compromise with TYC, Trump Org. subsequently offered to provide Eric Trump for testimony in lieu of Mr. Trump just as had been ordered in a similar proceeding involving the TRUMP Trademarks. *See* Weiner Decl., Ex. B, *Yung v. Trump*, 11 CV 01413 (DLI)(VVP) (E.D.N.Y. Oct. 21, 2011) (denying the plaintiff's motion to compel the deposition of Mr. Trump). TYC never responded to that offer.

15. Instead, on November 6, 2015, TYC served its Notice of Deposition of Mr. Trump, indicating TYC's intent to question Mr. Trump on topics whose answers are readily obtainable from either me or Eric Trump. *See* Weiner Decl., Ex. J, Plaintiff-Applicant's Notice of Taking Testimony Deposition of Donald J. Trump.

16. Despite repeated requests, TYC has never given any explanation as to why it wants to depose Mr. Trump in the TTAB Proceeding, as opposed to me and Eric Trump.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of January, 2016
New York, New York



A handwritten signature in black ink, appearing to read "Alan Garten". The signature is fluid and cursive, with a horizontal line drawn underneath it.

Alan Garten